

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID ANDREW SCHLENKERT,

Movant,

v.

Case No. 2:03-cr-20
HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on. The Report and Recommendation was duly served on the parties. The Court has received objections from the movant. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Movant continues to assert that attorney Paul Peterson, who represented movant's co-defendant, and movant's attorney Assistant Public Defender Paul Denenfeld worked out of the same office causing a conflict in the representation of movant. Attorney Peterson, who is now an Assistant Public Defender, did not work for the Public Defender's Office at the time Assistant Public Defender Paul Denenfeld represented movant in this matter.

Movant claims that attorney Denenfeld failed to appeal movant's conviction and sentence. Movant pleaded guilty to interstate transportation of a stolen vehicle and possession of

a stolen firearm. Movant has failed to show that his plea was involuntary, or that any errors occurred in sentencing. The court informed the movant at the sentencing hearing:

I'm required to advise you that you have the right to appeal. You can appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary, or if there's some other fundamental defect in the proceedings that was not waived by your guilty plea. You also have a statutory right to a appeal your sentence under certain circumstances, particularly if you think the sentence is contrary to law.

With few exceptions, any notice of appeal must be filed within ten days of judgment being entered in your case. If you are financially unable to hire counsel, this Court will appoint counsel for you, and will furnish counsel with portions of the sentencing transcript required for your appeal.

If you are unable to pay the cost of appeal, you may apply for leave to appeal in forma pauperis. If you so request, the Clerk of the Court will prepare and file a notice of appeal on your behalf.

The record will reflect that the appeal documents have been provided to defense counsel, who has acknowledged their receipt on behalf of the defendant.

Sentence transcript, at 11, docket #56.

It is undisputed that movant informed counsel that he did not wish to appeal. Counsel sent movant a letter confirming the conversation that they had and informing movant specifically that counsel would not file an appeal. Movant claims to have changed his mind and asserts that he sent counsel a letter stating that he wished to appeal. Counsel sent movant the appeal papers. Movant claims that he lost the papers. Movant stated, during the sentencing hearing, that he had read the presentence report and discussed it with counsel. There were no objections to the report or to the court's calculation of the guidelines for sentencing. Movant cannot show that he has any issues that

he could appeal in this matter. Moreover, movant was informed by the court how to timely appeal and movant failed to take any appropriate action to perfect a timely appeal.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

Dated: November 29, 2005

/s/ Robert Holmes Bell

ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE